Supreme Court of the United States

OCTOBER TERM, 1952

No. 193

FORD MOTOR COMPANY, PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON BEHALF OF A CLASS, ETC., ET AL.

No. 194

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, ETC., PETITIONER,

vs.

GEORGE HUFFMAN, INDIVIDUALLY, AND ON BEHALF OF A CLASS, ETC., ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

BRIEF FOR FORD MOTOR COMPANY, PETITIONER

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OPINIONS BELOW

The majority and dissenting opinions of the Court of Appeals (R. 30-38) are reported in 195 F. 2d 170. The District Court rendered no opinion, but set forth in its judgment the reasons for its decision (R. 26).

JURISDICTION

The judgment of the Court of Appeals was entered on March 3, 1952 (R. 29). On March 21 and March 28, 1952, respectively, Ford Motor Company (hereinafter referred to as the "Company") and International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO (hereinafter referred to as "UAW-CIO") filed timely petitions for rehearing, which were denied on April 15, 1952 (R. 41, 53, 69). The petitions for writs of certiorari were filed on July 14, 1952. Certiorari was granted on October 13, 1952 (R. 70). Jurisdiction of the Court is invoked under the provisions of Section 1254(1) of the Judicial Code (28 U. S. C. § 1254(1)).

QUESTION PRESENTED

Whether a provision in a contract between an employer and the collective bargaining agent (under the National Labor Relations Act) for a unit of employees is invalid because it affords to employees first hired by such employer following military service in World War II seniority credit for the period of such service.

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that the provisions of the agreement between UAW-CIO and the Company were invalid because they:

(a) had no relevance to terms and conditions of work or the normal and usual subject of contracts between union and employer;

(b) dealt with a subject with respect to which the union had no authority to negotiate;

(c) were discriminatory despite the absence of any malice or hostility;

(d) were made without regard for the protection of all members of the union or the union as a whole;

(e) were based upon the period of military service of veterans not previously employed.

2. In reversing the summary judgment granted on petitioner's motion.

3. In failing (upon reversal) to remand the case for a trial on the issue of validity.

STATUTES INVOLVED

Section 8 of the Selective Training and Service Act of 1940, as amended,* provides in substance that any person who leaves the employ of a private employer or of the Federal Government in order to perform military service, and who makes application for re-employment within a specified period after he is relieved from such service, shall be restored to his former position or one of like seniority, status and pay (§ 8(b)). The section further provides (§ 8(c)):

*54 Stat. 890 (1940), as amended, 56 Stat. 724 (1942), 58 Stat 798 (1944), 50 U. S. C. App. § 308 (1946). The full text of the pertinent provisions of this Act is set forth in Appendix A to this brief, pp. 57-58.

"Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority * * * and shall not be discharged from such position without cause within one year after such restoration."

Section 12 of the Veterans' Preference Act of 1944* provides:

"In any reduction in personnel in any civilian service of any Federal agency, competing employees shall be released in accordance with Civil Service Commission regulations which shall give due effect to tenure of employment, military preference, length of service, and efficiency ratings: *Provided,* That the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service: *Provided further,* That preference employees whose efficiency ratings are 'good' or better shall be retained in preference to all other competing employees and that preference employees whose efficiency ratings are below 'good' shall be retained in preference to competing nonpreference employees who have equal or lower efficiency ratings: *And provided further,* That when any or all of the functions of any agency are transferred to, or when any agency is replaced by, some other agency, or agencies, all preference employees in the function or functions transferred or in the agency which is replaced by some other agency shall first be transferred to the replacing agency, or agencies, for employment in

*58 Stat. 390 (1944), 5 U. S. C. § 861 (1946).

positions for which they are qualified, before such agency, or agencies, shall appoint additional employees from any other source for such positions."

Section 7 of the National Labor Relations Act, as amended, upon which the decision of the Court of Appeals was based, reads as follows*:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection * * *."

Other provisions of the National Labor Relations Act which are relevant but to which the Court of Appeals did not advert in its opinion are the following**:

"Sec. 8. (a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 7;

* * *

"(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization * * *;

"(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

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*49 Stat. 452 (1935), 29 U. S. C. § 157 (1946), as amended, 61 Stat. 140 (1947), 29 U. S. C. § 157 (Supp. 1952).

**49 Stat. 452, 453 (1935), 29 U. S. C. §§ 158, 159 (1946), as amended, 61 Stat. 140, 143 (1947), 65 Stat. 601 (1951), 29 U. S. C. §§ 158, 159 (Supp. 1952).

"(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

"(b) It shall be an unfair labor practice for a labor organization or its agents—

"(1) to restrain or coerce * * * employees in the exercise of the rights guaranteed in section 7 * * *;

"(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) * * *;

"(3) to refuse to bargain collectively with an employer, provided it is the representative of the employees * * *.

* * *

"Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment * * *."

STATEMENT

Respondent Huffman entered the employ of Ford Motor Company on September 23, 1943 in a unit of employees for whom UAW-CIO was, and is, the collective bargaining agent (R. 6, Para. 15; R. 3, Paras. 4-5). He was inducted into the military service of the United States on November 18, 1944 and was discharged on July 1, 1946 (R. 6, Para. 15). Within 30 days after such discharge, he was re-

employed by the Company and, in accordance with the provisions of the Selective Training and Service Act of 1940, was immediately credited with seniority for the period of his military service (R. 6, Para. 15). He is a member of the UAW-CIO (R. 3, Paras. 4-5).

On February 21, 1951, respondent Huffman, individually and on behalf of approximately 275 other persons employed by the Company at its Louisville plant, commenced this action against UAW-CIO and the Company in which he sought a declaratory judgment of the invalidity of the provisions of the collective bargaining agreements between UAW-CIO and the Company relating to seniority rights of veterans who had not been employed at the time of their entry into military service (R. 2-9).

The collective bargaining agreements were three in number (R. 12, Para. 20). The first, entered into on July 30, 1946 between Ford and UAW-CIO as statutory bargaining representative for petitioner's employees (who are required by contract to be members of the Union (R. 3, Para. 4)), contained, in Section 13, the following provisions (R. 14-15):

> "(c) Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941 * * *.

> "(d) It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employee [sic] of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period."

Identical provisions were embodied in the second agreement, dated August 21, 1947, negotiated with the Company by UAW-CIO as bargaining representative of the Company's employees (R. 17-18, Sec. 13(c); R. 12, Para. 20). The third agreement between the Company and UAW-CIO, dated September 28, 1949, preserved to all veterans then employed by the Company the seniority credits provided in the 1946 and 1947 agreements (R. 21, Sec. 12(c); R. 12-13, Para. 20). Both the 1947 and 1949 agreements contained provision for ratification by the Union membership, and presumptively they were so ratified (Petition of Ford for Certiorari, p. 5; Res. Br. in Opp., p. 2).*

Each of the three agreements provided that veterans re-employed by the Company after a period of military service are entitled to credit toward seniority for such period of military service (R. 13-14, Sec. 13(a); R. 16-17, Sec. 13(a); R. 20, Sec. 12(a)).

The complaint alleges that Huffman and other employees at the Company's Louisville plant constitute a class whose relative positions on the Company's seniority roster have

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*Complete copies of the three agreements were annexed to the answer of the Company as Exhibits A, B and C (R. 12). Only the portions of such agreements containing the provisions attacked by respondent Huffman were included in the record on appeal to the Court of Appeals (R. 13-22, 27-28).

been changed, by reason of the aforementioned contract provisions, to positions lower than those to which they would otherwise be entitled (R. 5, Para. 9). Plaintiff and the class whom he represents are alleged to have been laid off or furloughed at times and for periods when, except for such provisions, they would not have been laid off or furloughed (R. 7, Para. 16). None of the members of such class, except Huffman, is alleged to be a veteran or to be protected by the Selective Training and Service Act (*cf.* R. 7-8, Para. 18).*

On motions by all parties for summary judgment (R. 10, 22, 25) the District Court dismissed the complaint (R. 26). In its judgment the court stated that it was of the opinion that "the collective bargaining agreement expresses an honest desire for the protection of the interests of all members of the union and is not a device of hostility to veterans", and that the court "finds that said collective bargaining agreement sets up a seniority system which the Court deems not to be arbitrary, discriminatory or in any respect unlawful" (R. 26).

The Court of Appeals reversed. The majority opinion (by Allen, C. J., concurred in by Hicks, Ch. J., R. 30-38), despite the assumption that the clauses in question were adopted without malice or hostility,** sustained the contention that the provision was invalid, as discriminatory, because "veterans with longer periods of military service but shorter periods of employment with Ford are favored above

*The complaint alleges that the members of the class alleged to be injured and the employees who are benefitted by the provisions in question are of approximately the same number (R. 5, Para. 10). This allegation is not admitted in Ford's answer (R. 11, Para. 10). Of course no employee hired before June 21, 1941, and none hired in recent years, would be affected.

**The complaint contains no allegation of malice or hostility.

Huffman and his class" and "veterans not employed at the time they entered military service" were given "seniority credits for their period of armed service after June 21, 1941" (R. 32). The court held that length of military service "has no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37). For this reason, the court held that the provisions were not authorized under the National Labor Relations Act, which, said the court, requires that in entering into labor contracts "the bargainers must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36).

In effect, the court has ruled that provisions concerning "seniority in layoffs" in favor of veterans later employed (R. 32) which are based in part upon length of military service are invalid as a matter of law for the reason that such provisions are deemed not to have been made for the protection of the interests of all members of the union but to discriminate unlawfully against one group of employees for the benefit of another.

Judge McAllister dissented, on the grounds stated by the District Court, "that the collective bargaining agreement expressed an honest desire for the protection of the interests of all members of the union; that it was not a device of hostility to veterans; and that the seniority system therein provided was not arbitrary, discriminatory, or unlawful" (R. 38).

All three judges concurred in rejecting respondent's contention that the provision of the agreement violates rights of veterans previously employed by the Company

which are secured under the Selective Training and Service Act of 1940 (R. 32-33), and respondent has not sought review of this ruling.

SUMMARY OF ARGUMENT

The decision of the Court of Appeals imposes undue limitations upon the scope of collective bargaining. By its decision that a union, as collective bargaining agent, cannot enter into an agreement with an employer which provides for seniority credit for the period of military service of veterans first employed after military service, the court in effect denies to union and employer the power to bargain collectively with respect to a problem concerning terms and conditions of employment which Congress had deliberately left to them for solution.

Congress dealt with the problems relating to returning veterans piecemeal and in part: first in the Selective Training and Service Act of 1940, and later in the Veterans' Preference Act of 1944. The 1940 Act covered both Federal and private employment. It accorded credit for seniority based upon military service to veterans who had previously been employed as an incident of their right to re-employment. It did not deal with veterans not previously employed and thus left open the question whether the same treatment should be accorded them. The 1944 Act dealt with this question in respect of Federal employment. As regards preferences in layoffs in Federal employment, it accorded to all veterans alike credit in seniority for length of military service without regard to whether or not they had been previously employed by the Federal Government. Having thus accorded equality of treatment in respect of

Federal employment, Congress manifestly left to unions and employers the question whether its policy of equality in treatment should be followed in private industry. In doing so, Congress must have had in mind that the collective bargaining procedure, which it had established under the National Labor Relations Act, conferred authority to deal with the problem.

In holding that contract provisions for seniority credit for military service to veterans not previously employed had no relevance to terms and conditions of work or to the normal and usual subjects of contracts between union and employer, the Court of Appeals failed to appreciate the problem which confronted the collective bargaining agent and that such provisions are normal and usual subjects of collective bargaining. As Congress contemplated, the problem has been dealt with by collective bargaining in industry and industry has followed the lead set by Congress. The UAW-CIO in 1944 recommended negotiation for such provisions to all of its locals. Where disputes arose with employers as to such provisions and the matter was taken to the War Labor Board, the Board directed negotiation on the subject and thus indicated that it fell within the area of collective bargaining. *In re Firestone Tire & Rubber Company*, 28 War Labor Rep. 483 (1945); *In re American Can Company*, 28 War Labor Rep. 764 (1946). Provisions of like tenor have been endorsed by the United States Department of Labor and have been included in many contracts between unions and employers.

The problem with which the union was obliged to deal was the dissatisfaction of veterans not previously employed, which had a logical basis in three facts. First, those em-

ployees who obtained work during the war were accruing seniority at a time when others, being absent in military service, were deprived of the opportunity to obtain employment and establish a hiring-in date. Second, the Selective Training and Service Act of 1940, in providing for restoration to their jobs, with accrued seniority, of veterans previously employed, thereby emphasized an unfairness inherent in the predicament of the veteran not previously employed. Third, the failure of Congress to include in the Veterans' Preference Act of 1944 a provision covering the seniority status in private employment of veterans not previously employed, placed such veterans at a disadvantage in entering private, instead of Federal, employment.

Within the area of collective bargaining, the bargaining representative is clothed with powers comparable to those possessed by a legislative body whose judgment must be sustained if any state of facts could exist which would reasonably relate its exercise of judgment to accomplishment of an authorized objective. *Steele* v. *Louisville & Nashville R. R.*, 332 U. S. 192, 202 (1944). The provisions of the collective bargaining agreement here in question constitute conditions of employment which bear a reasonable relation to the problem required to be solved, are reasonably conducive to smoother industrial relations, and should be held to be within the power of the Union to negotiate. The interpretation placed upon the Act by the Court of Appeals fails to carry out the policy of the National Labor Relations Act, which broadly accepts the principle of collective bargaining as the appropriate procedure for the resolution generally of all problems with reference to rates of pay, hours and other conditions of employment.

To accomplish the purpose of the Act, broad discretion must be accorded to the bargaining representative. *Steele* v. *Louisville & Nashville R. R., supra.*

The constitutional concept of equal protection upon which the *Steele* case was based requires the reversal of the decision of the Court of Appeals because the contract provisions in question are relevant to the purposes of collective bargaining within the meaning of that case. There is no such discrimination here as was involved in the *Steele* case, where a labor agreement was held invalid because it discriminated against negroes solely by reason of their race. Indeed, Congress itself could not have authorized the discrimination involved in that case.

Other decisions by Federal and State courts uniformly have accorded to unions a wide discretion in settling industrial problems by the collective bargaining process despite the adverse effect of the solution on some of the employees represented by it. *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521 (1949); *Britt* v. *Trailmobile Co.*, 179 F. 2d 569 (6th Cir. 1950), *cert. denied*, 340 U. S. 820 (1950); *Hartley* v. *Brotherhood of Ry. & S. S. Clerks*, 283 Mich. 201, 277 N. W. 885 (1938); *Elder* v. *New York Cent. R. R.*, 152 F. 2d 361 (6th Cir. 1945). In fact, no court heretofore has held a provision of a labor contract invalid upon considerations of the type relied upon by the Court of Appeals. The present decision, if allowed to stand, would result in widespread confusion and ~~most~~ serious question upon the validity of many types of provisions commonly adopted in negotiated labor contracts.

ARGUMENT

I

Congress contemplated that the question whether veterans not previously employed should receive seniority credit in private employment for military service could be dealt with by collective bargaining.

Congress has twice dealt with the problem of integrating returning veterans into civilian employment: in the Selective Training and Service Act of 1940; and in the Veterans' Preference Act of 1944 (*supra*, pp. 3, 4).

In the Selective Training and Service Act of 1940, Congress undertook to legislate with respect to both private and Federal re-employment of returning veterans. By Section 8, any person who left either Federal or non-temporary private employment in order to perform military training or service was entitled under certain conditions, upon his return from service, to restoration to his former position or "to a position of like seniority, status, and pay". Once restored to that position he is required to "be considered as having been on furlough or leave of absence" during his military service and to be "restored without loss of seniority" (§§ 8(b) and 8(c), Appendix A, pp. 57-58).

But for these provisions, a returning veteran seeking re-employment would have found himself at a serious disadvantage. In the first place, during his absence, his job might have been filled by another. And, even if his former employer could find a place for him, he would have been prejudiced in his seniority status. Such prejudice would have been in direct proportion to the length of his military service. Section 8 of the 1940 Act was designed to obviate

both of his difficulties. It not only restored to him his job, but entitled him to the same seniority to which he would have been entitled if he had not been absent from his employment during the period of his military service. *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U. S. 275 (1946); *Trailmobile Co.* v. *Whirls*, 331 U. S. 40 (1947); *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521 (1949). Congress thus removed an area of discrimination resulting from military service which would otherwise have existed against the veterans who had been previously employed. It avoided the development of one kind of dissatisfaction and friction which might have led to strikes.

Congress dealt in that statute only with re-employment rights of veterans previously employed and as an incident thereof the seniority status upon re-employment. It did not consider the situation of returning veterans not previously employed, and thus left open the question whether once they had secured employment they should be accorded the same status as veterans previously employed. Never having established relations with any employer, their predicament upon returning from the service often was worse than the class of veterans covered by Section 8.

The factual difference between the two classes of veterans was not so sharp as might appear on the surface. Many young men were able to obtain employment for very brief periods before entering military service, thus securing statutory rights looking towards their return. Others, through lack of opportunity or inclination, did not do so. The fact that legislative provision had been made for the previously employed was a circumstance likely to provoke friction and serious discontent which would be aggravated by a feeling, not without justification, that the very measures provided

for by Section 8 had the effect of discrimination against veterans not previously employed.

These implications were both serious and far-reaching. They embraced both Federal and private employment, and the problem for both multiplied in its intensity as increasing numbers of veterans returned from the service.

Congress dealt with the question of new Federal employees in the Veterans' Preference Act of June 27, 1944.* With respect to seniority in relation to reduction in personnel or layoffs, Section 12 of the Act made no distinction between veterans employed by the Federal Government prior to their military service and those who entered Federal employ after military service.** In either case, length of military service was credited in computing total length of service. That section provided in part:

> "In any reduction in personnel in any civilian service of any Federal agency * * * the length of time spent in active service in the armed forces of the United States of each such employee shall be credited in computing length of total service * * *."

In thus placing all veterans on a parity without regard to whether their first Federal civilian employment had been before or after military service, Congress established a policy of equality of treatment which tended to erase any distinction which may have resulted from the Selective Training and Service Act and placed both classes of veterans on a parity with those who had not been in military service.

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*58 Stat. 387 (1944), 5 U. S. C. § 851 *et seq.* (1946), as amended. 61 Stat. 501 (1947), 62 Stat. 3 (1948), 62 Stat. 1233 (1948), 63 Stat. 666 (1949), 64 Stat. 1117 (1950), 5 U. S. C. § 851 *et seq.* (Supp. 1952).

**58 Stat. 390 (1944), 5 U. S. C. § 861 (1946).

In doing this, Congress high-lighted the problem for private employment. The problem related to terms and conditions of employment and therefore was within the scope of the employer's obligation to bargain under the National Labor Relations Act. Manifestly, if a collective bargaining agreement could not lawfully contain a provision giving full or partial recognition to the length of military service, the problem would be without the possibility of solution in unionized industry in the absence of a further act of Congress. And since Congress took no further action it must have intended that the problem in private industry could and should be dealt with through the collective bargaining process. To conclude otherwise is to attribute to Congress an expressed intention that veterans newly employed in private industry as a matter of law could not be accorded similar equality of treatment as were veterans newly employed by the Government.

The circumstances under which Congress left the problem of seniority of returning veterans to the collective bargaining process are significant. Although Congress dealt only with Federal employment in the Veterans' Preference Act of 1944, it did not overlook the related problems in private employment, which it contemplated would be solved without further Congressional action. The 1944 Act was in pursuance of a veterans' employment and rehabilitation program which was dependent in large part upon the cooperation of private industry, inasmuch as the Government itself obviously could not have found employment for all returning veterans. If seniority problems could not be dealt with under the collective bargaining process, the program might well have failed, at least in part, through lack

of ability of unionized private industry to cooperate.* The Congressional reports on the bill clearly show that Congress had private employment very much in mind and counted upon the cooperation of industry in supporting its program for the adjustment and rehabilitation of World War II veterans.** As the Court pointed out in *Mitchell* v. *Cohen*, 333 U. S. 411, 418-419 (1948):

> "* * * The Federal Government, in its capacity as an employer, determined to take the lead in such a program. * * *"

In a footnote the Court made reference to the Congressional debates [90 Cong. Rec. 3501-3507 (1944)] and to the House Report, which stated [H. R. Rep. No. 1289, 78th Cong., 2d Sess., p. 3 (1944)] (333 U. S. at 419 n. 13):

> "Private employers and corporations, as well as State, county, and municipal governments, have been urged through the selective-service law and otherwise to afford reemployment to veterans when they

*There would be nothing to prevent a non-unionized employer who is under no duty to bargain with a representative of his employees from retaining veterans in employment during periods of layoffs whether or not they had been in his employ before military service.

**Congress had the same general attitude toward private industry when it passed Section 8 of the Selective Training and Service Act of 1940. That Act, as above noted, dealt, as regards seniority, precisely the same with both private and Federal employment. As to the obligation to rehire, however, the provision as to the Federal Government was without qualification; whereas the private employer was not required to re-employ a veteran when the employer's circumstances had so changed as to make it impossible or unreasonable for him to do so. As pointed out in the majority opinion by Mr. Justice Black in *Hilton* v. *Sullivan*, 334 U. S. 323, 329 (1948); this difference had been noted by the Congressional sponsors of the Act "who thought that the Federal Government should set an example to private industry by providing jobs for all returning veteran employees".

> leave the armed forces. Your committee feels that the Federal Government should set the pace, and that this proposal is an essential part of the reemployment and rehabilitation program."

and to the Senate Report, which stated [Sen. Rep. No. 907, 78th Cong., 2d Sess., p. 1 (1944)]:

> "The committee believes that in view of the fact that members of the armed forces rapidly are being returned to civilian life, the bill should be enacted without delay."

It is accordingly clear that by this Act Congress intended to set the pace for private industry in integrating returning veterans into civilian employment, and it obviously contemplated that industry, through the collective bargaining process, would be able to follow the pace.

If there had been any doubt as to the authority, under the National Labor Relations Act, of unions and employers to reach a solution of the question as to whether the length of service of veterans not previously employed should be credited where appropriate in determining their seniority, Congress would have dealt with the problem for private employment at the time that it dealt with the problem in Federal employment. Manifestly, Congress did not intend to render it legally impossible for privately employed veterans, like Federally employed veterans, to receive appropriate recognition toward seniority for their military service.

II

Provisions granting credit for seniority based upon military service to veterans not previously employed have been regarded heretofore as within the scope of the collective bargaining process.

In holding that the contract provisions granting seniority credit upon the basis of military service to veterans not previously employed had "no relevance to terms and conditions of work or the normal and usual subjects of contracts between union and employer" (R. 37), the Court of Appeals overlooked both the nature of the industrial problem involved and the fact that bargaining for its solution has been common collective bargaining practice.

The industrial problem was nationwide. It was that of absorbing the returning serviceman into employment with as little disruption as possible. Widespread dissatisfaction with his lot, arising out of the veteran's feeling that he had lost out in his competitive status in employment, would have caused the type of unrest which leads to strikes. By the Selective Training and Service Act Congress had removed this source of dissatisfaction as to such of the veterans as had been employed before they went into the service by prohibiting discrimination against them because of their military service (*supra*, p. 15). But the 1940 Act had left unsolved the problem of the veterans who had not been previously employed. It is precisely that problem which many unions and employers proceeded to solve by the process of collective bargaining. Collective bargaining is the only available means provided by the National Labor Relations Act for the solution of such a problem, which directly in-

volves seniority as a "condition of employment" (§§ 9(a), 8(a)(5) and 8(b)(3), *supra*, pp. 5-6).

Steps in this direction were commenced shortly after Congress, by the Veterans' Preference Act, had set an example for industry by providing for seniority credit in Federal employment for *all* returning veterans upon the basis of military service. In October 1944 the International Executive Board of the UAW-CIO adopted a model provision dealing with employment rights of returning veterans (15 Lab. Rel. Ref. Man. 2535 (1946)*). The model provision preserved to veterans previously employed the rights accorded to them by the Selective Training and Service Act. It extended to veterans not previously employed seniority credit on the basis of their military service (p. 2536). The model provision was publicized and copies forwarded to all local unions with instruction to undertake negotiations with employers for incorporation of the provision into existing agreements as soon as possible (p. 2536).

These recommendations were followed. In several instances disputes with employers as to the inclusion of such provisions were presented to the War Labor Board. Some Regional Boards directed inclusion of such provisions in labor contracts. *In re The Murray Company*, 25 War Labor Rep. 217, 221, 222 (Regional Board VIII (Dallas) 1945); *In re Firestone Tire & Rubber Company*, 24 War Labor Rep. 322 (Regional Board IV (Atlanta) 1945); *In re American Can Company*, 27 War Labor Rep. 634 (Regional Board V (Cleveland) 1945).** Although the

*All references in this brief to "Lab. Rel. Ref. Man." refer to the Manual of the Labor Relations Reporter.

**Regional Board II reached a similar result in *In re J. H. Williams Co.*, 27 War Labor Rep. 239 (New York 1945), but an editorial footnote indicates that it subsequently vacated the contract provision.

National Board reviewed the latter two cases and directed that the provisions in question be vacated; in each case the Board referred the issue back to the parties for negotiation. *In re Firestone Tire & Rubber Company*, 28 War Labor Rep. 483 (1945); *In re American Can Company*, 28 War Labor Rep. 764 (1946). At the time of these decisions such provisions were relatively new, and since the Board's power was limited to requiring terms and conditions "customarily included in collective-bargaining agreements" (57 Stat. 163, 166 (1943)), the Board apparently concluded that it was not appropriate at the time to compel their inclusion. See *In re Buckeye Traction Ditcher Company*, 20 War Labor Rep. 247, 249 (Regional Board V (Cleveland) 1944). But, by remitting the provision to the parties for further negotiation, the Board recognized that the matter was a proper subject for collective bargaining. In no case did the Board suggest that such a provision would be beyond the scope of collective bargaining.

The Court has had occasion to refer to decisions of the War Labor Board as indicating that particular provisions of labor agreements fall within the area of collective bargaining. *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521, 528-529 n. 5 (1949); *National Labor Relations Board* v. *American Ins. Co.*, 343 U. S. 395, 405-406 (1952). Thus, in the latter case the Court referred to the fact that the Board had directed the inclusion of a particular type of management function provision in some contracts, but not in others, and said (pp. 406-407):

> "* * * Without intimating any opinion as to the form of management functions clause proposed by respondent in this case or the desirability of including any such clause in a labor agreement, it is mani-

fest that bargaining for management functions clauses is common collective bargaining practice."

In 1946, subsequent to the above decisions of the War Labor Board, the United States Department of Labor recommended the inclusion in labor agreements of provision for new employees who were veterans (R. 58-59; "Reemployment of Veterans Under Collective Bargaining," U. S. Department of Labor, Bureau of Labor Statistics (October 1947) pp. 46-48). The Retraining and Reemployment Administration of the Department of Labor, after consultation with representatives of labor, management and veterans' organizations, in an effort to assist in the process of reintegration, to minimize the competitive disadvantage inherent in long-term absence from civilian employment and to help veterans obtain and hold suitable jobs, published a statement of principles, which was endorsed by Secretary of Labor Schwellenbach, for the guidance of government, management and labor.* Among the principles enunciated was the following:

> "13. *Newly hired* veterans who have served a probationary period and qualified for employment should be allowed seniority credit, at least for purposes of job retention, equal to time spent in the armed services plus time spent in recuperation from service-connected injuries or disabilities either through hospitalization or vocational training." (Italics supplied.)

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*Those consulted included representatives of the following organizations: American Federation of Labor, Congress of Industrial Organizations, Railway Labor Executives' Association, Business Advisory Council to the Secretary of Commerce, National Association of Manufacturers, U. S. Chamber of Commerce, American Legion, Disabled American Veterans and Veterans of Foreign Wars.

Similar provisions have been included in 300 different collective bargaining contracts between UAW-CIO and other employers (R. 59-60), as well as in many other collective bargaining contracts entered into by other unions (Petition of Ford for Certiorari, pp. 8-9; Petition of UAW-CIO for Certiorari, App. C, pp. 36-51). The employers which are or have been parties to such contracts include many well-known companies: Chrysler Corporation, Hudson Motor Car Company, Kaiser-Frazer Corporation, Bendix Aviation Corporation, Electric Auto-Lite Company, Minneapolis-Moline Power Implement Company, Houdaille-Hershey Corporation, Bohn Aluminum and Brass Corp., Bell Aircraft Corp., North American Aviation, Inc., American Thread Co., Cluett, Peabody & Co., Inc., Forstmann Woolen Co., Nashua Manufacturing Co., Sargent & Co., Emerson Electric Mfg. Co., Landers, Frary & Clark, Fall River Textile Manufacturers Ass'n and New Bedford Cotton Manufacturers Ass'n (Appendix C to the UAW-CIO Petition for Certiorari, pp. 37-44). See also "Veterans' Rights Under Union Agreements", U. S. Department of Labor, Bureau of Labor Statistics (October, 1946), summarized in 19 Lab. Rel. Ref. Man. 29 (1947); Bulletin No. 908-6, U. S. Department of Labor, Bureau of Labor Statistics (1948) p. 43 *et seq.*; "Reemployment of Veterans Under Collective Bargaining," U. S. Department of Labor, Bureau of Labor Statistics (October 1947) p. 3 *et seq.**

It is thus apparent that even before the cessation of actual fighting, the collective bargaining process had been

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*The cited authorities also show that many unions and employers have granted veterans special seniority credit, because of military service, in other situations not covered by the Selective Training and Service Act, for instance, in the cases of temporary employees and of disabled employees. See also B. N. A., Collective Bargaining Contracts (1941) p. 369 *et seq.*

invoked for the removal of discrimination in tenure of employment against veterans not employed before their military service; that where seniority systems had been adopted, this was sought to be accomplished by giving such veterans credit toward seniority based upon military service; and that negotiations for the inclusion of such provisions had become a common practice in collective bargaining. Therefore, such provisions (to use the language of the Court in *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521, 528, n. 5 (1949)) are "not at all uncommon" and have been regarded as "within the area of collective bargaining".

III

The provisions are relevant to the authorized objectives of collective bargaining under the National Labor Relations Act.

The plaintiff challenges the authority of the Union, as the collective bargaining agent, to enter into such an agreement on behalf of all members of the Union. The Court of Appeals sustained his contention, despite its assumption that both the Union and Ford, in executing the bargaining contract, "had a well-meaning desire to protect veterans who had had no chance for employment prior to their service in the armed forces" (R. 36). But, the Court of Appeals said (R. 36), "in so doing they clearly discriminated against other veterans who had entered the military service when already employed by Ford. We think such a contract is not authorized under the National Labor Relations Act." The reasoning appears to be that a measure designed to help certain veterans is necessarily discrimina-

tory against others—even though those others enjoy the benefit of at least as favorable treatment—and therefore not within the authority of collective bargaining agents which, according to Judge Allen, "must make their agreements with a view to the rights of the entire group bound by them, and not enter into agreements which discriminate against one part for the benefit of another" (R. 36).* But Judge Allen's reasoning overlooks a major objective of the National Labor Relations Act.

The clear purpose of that Act was to avoid industrial unrest which leads to strikes and consequent interruption of interstate commerce. The recital of congressional policy which appears in the original Wagner Act includes the statement (49 Stat. 449 (1935), 29 U. S. C. § 151 (1946)):

> "The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce * * *."

And this policy was reaffirmed by Congress by the declaration in the Taft-Hartley Act, which states (61 Stat. 136 (1947), 29 U. S. C. § 141 (Supp. 1952)):

> "Industrial strife which interferes with the normal flow of commerce * * * can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one

*We must confess complete inability to understand how the court could conclude that there was any discrimination "against" reinstated veterans as a class. Assuming equal military service, the same amount of seniority credit was given for it to each class. The advantage, if any, was in favor of the reinstated veterans who alone could get credit for military service prior to June 21, 1941

another's legitimate rights in their relations with each other * * *."

The Court has frequently referred to the policy, of which the Act is an expression, of avoiding industrial unrest and strikes by utilization of the collective bargaining process. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 45 (1937); *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 221-222 (1938); *Terminal R. R. Ass'n* v. *Brotherhood of R. R. Trainmen*, 318 U. S. 1, 6 (1943); *National Labor Relations Board* v. *American Ins. Co.*, 343 U. S. 395, 401-402 (1952). *Cf. Steele* v. *Louisville & Nashville R. R.*, 323 U. S. 192, 199-200 (1944). Indeed, the provisions of the Act were held constitutional by virtue of recognition by the Court that prior to the Act industrial unrest and strikes had been avoided by means of collective bargaining. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, *supra* at 42; *cf. Virginian Ry.* v. *System Federation No. 40*, 300 U. S. 515, 534 (1937). Industrial unrest and strikes are the results of collective dissatisfaction of individual workers. Congress adopted collective bargaining as a means of removing such dissatisfaction on the part of employees by granting them the right to conduct collective bargaining negotiations through a representative chosen by majority vote (§§ 7 and 9(a), *supra*, pp. 5-6). It made that representative the exclusive representative and imposed upon the employer and that representative alike the mutual obligation to treat with each other in respect of wages, hours of employment or other conditions of employment (§§ 8(a)(5), 8(b)(3) and 9(a), *supra*, pp. 5-6). Obviously Congress thus gave implicit recognition to the use of collective bargaining as a means of solving any problem relat-

ing to terms and conditions of employment which might give rise to industrial unrest. The Court has specifically pointed this out in dealing with similar provisions of the Railway Labor Act, the purpose of which does not differ from that of the National Labor Relations Act. In *Steele* v. *Louisville & Nashville R. R., supra,* 323 U. S. at 199-200, the Court said that the aim of that Act was sought to be achieved by encouraging "the prompt and orderly settlement of *all disputes* concerning rates of pay, rules and working conditions" (Italics supplied).

Seniority and layoff systems are terms or conditions of employment. As such they have been held to be within the area of collective bargaining. In *Aeronautical Industrial District Lodge 727* v. *Campbell,* 337 U. S. 521 (1949) the Court recognized that seniority was "a part of the process of collective bargaining" (p. 526); and in *Steele* v. *Louisville & Nashville R. R., supra,* 323 U. S. at 203, the Court regarded "differences in seniority" as "within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit".

The Union, in negotiating the labor contract for the benefit of its members as a whole, was bargaining for a seniority system. If the system were based solely upon the principle of length of employment, it was inevitable that certain of the employees whom it represented would be dissatisfied.* Thus, the veterans employed before a period of military service would have been dissatisfied if the Federal statute had not accorded them seniority credit for military

*The Union was under no legal duty to negotiate for a system of layoff based solely or primarily on length of employment. Such systems are not a usual feature of collective bargaining agreements in a number of industries, for example, the building and maritime industries. Cf. The *Aeronautical Lodge* case, *supra,* 337 U. S. at 527.

service. And failure to accord similar treatment to veterans first employed after military service inevitably would have resulted in dissatisfaction on the part of that class of veterans. In the case of Federal employment, Congress had avoided such dissatisfaction by according like treatment with respect to seniority credit for military service to all veterans in Federal civilian employment (*supra*, p. 17). And Congress had contemplated that, where appropriate, private industry would follow its lead (*supra*, pp. 18-20). The Secretary of Labor had also recommended the same solution to private industry (*supra*, p. 24). In view of such precedents, if the Union had not adopted this policy of equality of treatment, the veteran who had not been employed before military service would thus have had more than adequate justification in feeling dissatisfied with his lot. His only remedy would have been to attempt to force the adoption of such a provision through action which might have led to a strike. This is the very thing the Act was intended to avoid.

It cannot be assumed, as the Court of Appeals appears to have done (R. 38), that the Union failed to consider the rights of veterans employed prior to military service. The rights of such veterans must have been considered for their very existence not only aggravated the problem with respect to the other class of veterans (*supra*, p. 16) but created an obvious discrimination which might have been made the basis for the mobilization of public opinion against the Union (as well as the employer) by veterans not previously employed, on the charge that labor contracts had frozen them out of employment opportunities in favor of those who had come into the plants to enjoy the prosperity of war work while they were fighting for their country.

The Union was compelled to decide whether to run the risk of resultant labor unrest and a possible strike or to accord equal treatment to all veterans and to place all of them on a parity with nonveterans. Surely its decision to take the latter course cannot be deemed to be arbitrary. Its decision was in the interests of all employees represented by it because, among other things, it avoided the possibility of a strike and of adverse public opinion which might have served to weaken the Union. And certainly it is neither wise nor correct to assert that unions are under a legal duty to approach bargaining problems on the most narrowly selfish basis possible, without regard either to the interests of society as a whole or to their own standing in society. The decision of the Court of Appeals in effect asserts such a duty.

That the provisions for seniority credit in the present case are not arbitrary is clearly indicated by the decision in *Aeronautical Industrial District Lodge 727* v. *Campbell*, 337 U. S. 521 (1949). There the Court stated that contract provisions giving special seniority to union chairmen benefitted all members of the unit represented "by promoting greater protection of their rights and smoother operation of labor-management relations" (p. 529). It concluded that the provisions "surely ought not to be deemed arbitrary or discriminatory" (p. 528) and added (n. 5) that, "while there is not complete agreement on the advantage of" such provisions, "it is certainly within the area of collective bargaining".

Until its decision in this case, the Court of Appeals, on the authority of the *Aeronautical Lodge* case, had recognized that provisions as to seniority dictated by objectives similar to those present here were within the authority of a collective bargaining agent. *Britt* v. *Trailmobile Co.*, 179 F. 2d

569, 573 (6th Cir. 1950), *cert. denied*, 340 U. S. 820 (1950). There the agreement defined the seniority rights of two classes of employees. One class originally had been employed by a subsidiary which merged with Trailmobile; the other had been employed by Trailmobile itself prior to the merger. For a time after the merger both groups were afforded seniority rights by the union agreement upon the basis of their hiring date by either the subsidiary or by Trailmobile. The Trailmobile employees, constituting a majority, organized a new union which negotiated a new contract with the company. That contract continued to establish the seniority of those employed by Trailmobile prior to the merger upon the basis of their original date of employment by that company; but the seniority of those formerly in the employ of the subsidiary was based upon their employment from the date of the merger only. The result was an obvious preference by the union of old Trailmobile employees as against the other employees. In its opinion sustaining this differentiation, the Court of Appeals specifically pointed out that the *Aeronautical Lodge* case, *supra*, "tells us * * * that it would be an undue restriction on the process of collective bargaining to forbid changes in collective bargaining arrangements whereby veterans, as well as nonveterans, are benefited by promoting greater protection of their rights and smoother operation of labor-management relations" (p. 572). The court went on:

> "* * * Collective bargaining is a continuous process and a veteran becomes the beneficiary of those gains, the achievement of which is the constant thrust of collective bargaining. Collective bargaining agreements are made by a bargaining agent selected by a majority of the working force and are

binding upon all employees. One who benefits as the result of such collective agreements must * * * accept not only its advantages but its limitations."

And the court concluded (p. 573):

> "* * * Whatever we might think of the fairness of the differentiation, the discrimination was in pursuance of the bargaining process and not without some basis, forestalled a strike and was therefore not invalid. Aeronautical Industrial District Lodge 727 v. Campbell, supra."

The reasoning of the court in that case is equally applicable to this. This is indicated by the decisions in the only two other cases in which provisions of like content have been attacked.

The identical contract provisions involved in this case were sustained in an unreported decision by the District Court for the Western District of North Carolina in *Price, et al.* v. *Ford Motor Company and UAW-CIO*, Civil Action No. 564 (1948).* There, several Ford employees who were not veterans sought to enjoin the carrying out of the provisions of the agreement of August 21, 1947, which are attacked in this case. The plaintiffs' seniority was alleged to have been reduced "without regard to whether said new employees are better fitted to do and perform the work" (Para. 11, Appendix B, p. 62). Such action was alleged to be "discriminatory" and to infringe "due process of law" and "the equal protection of the laws" (Para. 12, Appendix B, p. 62). The order of the court, on motions by the

*A certified copy of the proceedings in this case has been lodged with the Clerk of this Court. The amended complaint and the order of the court dismissing it have been printed as Appendices B and C to this brief.

Union and the Company for a summary judgment, states that the agreement between the Company and the Union "and every part thereof, is valid and binding upon said Union and upon the plaintiffs" and, accordingly the action was dismissed (Appendix C, p. 65).

In *Haynes* v. *United Chemical Workers, CIO*, 190 Tenn. 165, 228 S. W. 2d 101 (1950), provisions in a contract between the union and employer granted to all veterans of World Wars I and II seniority credit equal to 25 per cent of the time spent in the armed services during such wars, whether or not they had previously been employed by the company. Other employees sought an adjudication that such provisions were invalid as impairing the seniority rights of nonveterans as well as those of veterans who had been employed by the Company before entering military service. These employees argued that the *Steele* case, *supra*, required that the court hold such provisions invalid. The validity of the contract, however, was upheld as not violative of any State or Federal policy.

Though the Court of Appeals in the instant case cited *Steele* v. *Louisville & Nashville R. R.*, 323 U. S. 192 (1944), to support its decision that the contract provisions were invalid, it is apparent that the *Steele* case requires that the contract provisions be sustained.

The Court in that case was dealing with discrimination against negro brakemen by virtue of their race alone, a situation obviously distinguishable from the facts of this case. The decision was based upon a constitutional concept. The Court pointed out that the authority of the union to negotiate for the negro brakemen was based solely upon the Railway Labor Act, since the brakemen

were not members of the union and therefore had not consented to be represented by it. It concluded that the Act imposed upon the bargaining representative "the duty to exercise fairly the power conferred upon it in behalf of all those for whom it acts, without hostile discrimination against them" (pp. 202-203); and this duty was held to be breached by "discrimination" based upon race alone which the Court characterized as "obviously irrelevant and invidious" (p. 203).

The fact that the Court felt impelled to outlaw the racial discrimination by virtue of constitutional principles is further shown by the subsequent decision of the Court in *Brotherhood of R. R. Trainmen* v. *Howard*, 343 U. S. 768 (1952), where the Court held that a bargaining representative chosen under the Railway Labor Act could not discriminate in terms and conditions of employment against negro employees who were not even members of the craft or unit represented by the union and toward whom the union had no statutory duty of representation. The decision was based upon the *Steele* case and upon *Shelley* v. *Kraemer*, 334 U. S. 1 (1948), in which the Court refused to enforce restrictive covenants in private agreements discriminating against negroes because of their race.

In analyzing the grant of power to the bargaining agent under the Railway Labor Act, the Court in the *Steele* case said that (p. 198) "the representative is clothed with power not unlike that of a legislature", which "is subject to constitutional limitations on its power to deny, restrict, destroy or discriminate against the rights of those for whom it legislates and it is also under an affirmative constitutional duty equally to protect those rights". Accordingly, discriminations based upon race or color, which would be in-

valid if contained in legislation, would be likewise unauthorized if contained in a collective bargaining agreement. The Act imposed upon the statutory representative of a craft (p. 202) "at least as exacting a duty to protect equally the interests of the members of the craft as the Constitution imposes upon a legislature to give equal protection to the interests of those for whom it legislates" and "Congress has seen fit to clothe the bargaining representative with powers comparable to those possessed by a legislative body both to create and restrict the rights of those whom it represents, cf. *J. I. Case Co.* v. *Labor Board, supra* [321 U. S.] 335, but it has also imposed on the representative a corresponding duty". And the Court did not end the analogy with reference to the limitations upon legislative powers. Instead, it developed the affirmative aspects of legislative powers. It said (323 U. S. at 203):

> "This does not mean that the statutory representative of a craft is barred from making contracts which may have unfavorable effects on some of the members of the craft represented. Variations in the terms of the contract based on differences relevant to the authorized purposes of the contract in conditions to which they are to be applied * * * are within the scope of the bargaining representation of a craft, all of whose members are not identical in their interest or merit. * * *"

In support of the foregoing conclusion, the Court cited three of its decisions which are illustrative of application of the principles which sustain the power of a state legislature to make differentiations among persons or classes whom it represents for the purpose of accomplishing an objective believed to be in the best interests of the public whom it

represents: *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 509 (1937); *Washington ex rel. Bond & Goodwin & Tucker* v. *Superior Court*, 289 U. S. 361, 366 (1933); and *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 583 (1935).

Thus, in the *Carmichael* case, the Court said (p. 509) "inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation", and a "legislature is not bound to tax every member of a class or none"; and (p. 518) the "end being legitimate, the means is for the legislature to choose"; when "public evils ensue from individual misfortunes or needs, the legislature may strike at the evil at its source".

And the following language in the *Metropolitan Casualty* case (p. 583) was cited by the Court in the *Steele* case:

> "The equal protection clause does not prohibit legislative classification and the imposition of statutory restraints on one class which are not imposed on another. * * * The ultimate test of validity is not whether foreign corporations differ from domestic, but whether the differences between them are pertinent to the subject with respect to which the classification is made. If those differences have any rational relationship to the legislative command, the discrimination is not forbidden." (Citations omitted.)

It is thus apparent that in construing the provisions of the Railway Labor Act, which grant to the statutory representative the power to conduct negotiations on behalf of all employees in a craft or unit, the test to be applied, at most, is whether the provisions of the labor agreement based upon the different interests of the employees who are affected,

continuance of his system, but concedes benefits to the employees in other respects so that a bargain is reached which the union feels, on the whole, is advantageous to the employees. Under the reasoning of the Court of Appeals, the union would have no authority to make this kind of an agreement; its authority would be limited to an agreement which required the employer to adopt only a system related to skill on the job or length of service with the company, regardless of what out-weighing benefits might accrue to the employees in return for consenting to some other method. Its choice presumably would be limited either to working without a contract or striking until it could get the kind of provision a court would approve, even though all of the employees affected might prefer to do otherwise. Yet, clearly such bargaining would not merely be "relevant" to, it would embody, terms and conditions of employment. In arriving at its conclusion, the court seems to have ignored completely the fundamental fact that a union cannot set conditions of employment unilaterally, but must procure agreement on them by the employer.

This Court in the case of *National Labor Relations Board* v. *American Ins. Co.*, 343 U. S. 395, 402 (1952), reiterated the principle that the Act does not "regulate the substantive terms governing wages, hours and working conditions which are incorporated in an agreement". Reviewing the changes made by the Taft-Hartley Act, the Court concluded "And it is equally clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements" (p. 404). Certainly the courts have no greater authority in this respect than the National Labor Relations Board which is charged with the duty of administering the Act.

The possibility that various contract provisions may be deemed invalid upon the basis of the decision of the Court of Appeals in this case and of resulting litigation by dissident employees involves potential risks to which employers will not lightly expose themselves.* If the scope of the bargaining representative's authority is circumscribed by the narrow legal confines adopted by the Court of Appeals, negotiations are apt to degenerate into legal debates over the union's power and authority to make the agreements it proposes.

The courts heretofore have accorded to unions broad discretion in solving the many problems which necessarily arise in the field of collective bargaining. They have upheld any reasonable solution reached by collective bargaining even though it required adjustment of the relative rights of classes of employees. This is clearly shown by the decisions in the *Aeronautical Lodge* case and in the *Britt* case, discussed *supra*, pp. 31-33, as well as by other decisions which have dealt with the power of a collective bargaining representative.

Thus, in *Foster* v. *General Motors Corp.*, 191 F. 2d 907 (7th Cir. 1951), *cert. denied*, 343 U. S. 906 (1952), the validity of contract provisions governing vacation pay was attacked as discriminating against veterans in violation of the Selective Training and Service Act. The contract provided that vacation pay for 1946 would be governed by the gross earnings of employees in 1945. Plaintiffs, who had been in military service during 1945 and thus had received no pay in that year, were not entitled to vacation pay in 1946. The validity of the contract was sustained notwithstanding the fact that the result appeared to be dis-

*The possible extent of litigation as a result of the decision in this case has been adverted to in Ford's Petition for Certiorari (p. 9).

criminatory against the plaintiffs. The court necessarily recognized that the contract provision fell within the scope of collective bargaining. It held that there had been no bad faith in the bargaining and said (at p. 911):

> "* * * After all, a union as an authorized bargaining agent no doubt is legitimately interested in obtaining the best possible contract for its members as a whole, and with numerous diversified interests among its members, especially, where its membership is large, there is nothing strange or unnatural if some segments of its membership are placed at disadvantage when compared with others. * * *".

In *Hartley* v. *Brotherhood of Ry. & S. S. Clerks*, 283 Mich. 201, 277 N. W. 885 (1938), the court sustained a provision requiring the dismissal of married women without regard to the seniority which they had accumulated previously. The provision had been adopted by the union and employer as a result of a growing body of sentiment, caused by the depression, that it was unfair to retain married women in employment solely because they had been employed before other persons, whose need for work was greater than that of married women. The court found that the purpose of the union was to protect the general welfare of its members, and the adverse effect of the change on particular individuals was held not to prevent a change in seniority rights which would meet the problem presented. The court stated (283 Mich. at 206-207; 277 N. W. at 887):

> "* * * This agreement was executed for the benefit of all the members of the brotherhood and not for the individual benefit of plaintiff. When, by reason of changed economic circumstances, it became ap-

parent that the earlier agreement should be modified in the general interest of all members of the brotherhood it was within the power of the latter to do so, notwithstanding the result thereof to plaintiff. The brotherhood had the power by agreement with the railway to create the seniority rights of plaintiff, and it likewise by the same method had the power to modify or destroy these rights in the interest of all the members.

"A different situation might be presented had the agreement of 1932 been accomplished as a result of bad faith, arbitrary action, or fraud directed at plaintiff on the part of those responsible for its execution. No claim or showing of such a nature is made in this case. * * *"

See also *Schlenk* v. *Lehigh Valley R. R.*, 74 F. Supp. 569, 571 (D. N. J. 1947).

This decision was followed by the Court of Appeals for the Sixth Circuit in *Elder* v. *New York Cent. R. R.*, 152 F. 2d 361 (1945) where, upon the consolidation of various offices in a railway system which had the effect of reducing available jobs, the union and the employer agreed that, despite the existence of a seniority system, employees on furlough at the time of the consolidation should be dropped completely from the company rolls. The result was that in the future, the employer was not required to rehire in order of seniority. No hostility or bad faith was alleged. The court, relying upon the above-quoted language from the decision in the *Hartley* case and distinguishing the *Steele* case, sustained this amendment to the agreement. The court said (at 364):

"* * * appellant rests upon no right created by statute * * *. His individual seniority rights were both created and limited by the bargain which was

have a rational relationship to an authorized objective. We submit that no more stringent test is required by the National Labor Relations Act,* and that, as we have shown, a rational relationship exists between the contract provision involved in this case and the purposes of collective bargaining.

IV

The provisions are not discriminatory or unfair.

The Court of Appeals stated that under the National Labor Relations Act the bargaining representative must "exercise fairly the power conferred upon it in behalf of all those for whom it acts without discrimination" (R. 36). It stated that the question presented in this case was "whether the union and management can by contract create preferential seniority in men not employed when they entered the armed services as against men, also veterans, who were employed when they entered the armed services" (R. 34).

The fairness of the Union's action in the present case, and the absence of discrimination as between veterans, is demonstrated readily by consideration of Huffman's individual position. As a veteran, Huffman relies in his complaint (Para. 15, R. 6-7) upon Section 8 of the Selective Training and Service Act, which entitles him to a seniority status computed upon the basis of the length of his employ-

*See Note, 65 Harv. L. Rev. 490, 495-497, 499 (1952). In applying the test of the *Steele* case to the *Britt* case, *supra*, p. 31, the Note states (p. 499) that "Although the solution was not the most reasonable * * * the result was at least rational. No more than this is required of economic legislation under the Equal Protection Clause".

ment by the Company, plus the length of his military service. As a result, in case of layoff, he may be preferred over others having a longer period of employment with Ford, but having a shorter period of, or no, military service. Despite this, he objects to the contract provisions which, on the same basis, give seniority credit to other veterans. As aptly stated by Judge Allen below (R. 32):

> "* * * He contends that veterans with longer periods of military service but shorter periods of employment with Ford are favored above Huffman and his class. * * *"

Under both the Selective Service Act, upon which Huffman relies, and the contract provision to which he objects, longevity of service for purposes of seniority is reckoned on the basis of service with the Company plus military service. The difference is this. Under the Act, employment with the Company must precede the military service; under the contract provision it need not. But the total time reckoned for seniority purposes for employees with equal periods of military service and employment with the Company is obviously the same whether the latter period is before or after military service. Under neither is employment with the Company given more weight than military service. And there is no requirement under either that the length of employment with the Company shall be long enough to gain a special competence in the job. The only difference is in computing the probationary period. In that respect, the previously employed veteran is given full seniority credit for military service at once; whereas veterans not previously employed must complete their probationary period before receiving seniority credit for military service, or otherwise.

Nevertheless, in his complaint (Para. 19, R. 8) Huffman charges that the contract provisions are based upon "differences" which are "not relevant to the actual conditions of work and of employment" and therefore are in the same arbitrary category as "differences relative to differing race, color or creed, or between World War I veterans and World War II veterans, or between blue-eyed workers and brown-eyed workers".

There is a curious inconsistency, and obvious lack of equity, in Huffman's position here: He accepts, without qualm, the seniority credit under the Selective Service Act for his own military service, but at the same time objects to the contract provision because it gives credit for military service to others. If there were merit in his charge of the "discrimination" against him under the contract provision, Huffman should logically have refused to accept a like "discrimination" in his favor under the Selective Service Act. Instead, he holds to that which is in his favor and claims that the contract provision (as stated—inexplicably—by Judge Allen, R. 38) "penalizes Huffman for working for Ford before his military service".

As a matter of fact, if Huffman had worked for the Federal Government (instead of Ford) before entering military service and had returned to that employment, he would have been in exactly the same situation. Under the Veterans' Preference Act (*supra*, p. 4) no distinction tion is made in layoffs from Federal employment between a veteran whose military service preceded employment and one whose employment preceded his military service. In each case, length of total service is computed on the basis of the length of time spent in military service plus the length of time in the employ of the Government. So veterans

with longer periods of military service might have had preference over Huffman. In this respect he receives the same treatment under the contract provision here as he would have received under the Federal statute if he had been a Federal employee.

The Court of Appeals, however, remarked that "the question presented is not whether a legislature could have imposed this change in seniority provisions through the medium of statute" (R. 34). But the difference, if any, between the legislative powers of Congress and the bargaining authority of the union does not prevent comparison of the contract provision with the analogous clause found in the Veterans' Preference Act. It is true that Congress is constrained only by the Fifth Amendment, which contains no equal protection clause. But the fact that Congress may have had plenary powers at its disposal (*Cf. Hirabayashi* v. *United States*, 320 U. S. 81, 100 (1943)) does not mean that the Veterans' Preference Act, in according equal seniority rights to veterans whether or not employed prior to military service, was for that reason arbitrary or that it necessarily effected "discriminations" between different groups of veterans. On the contrary, the whole purpose of Congress was to deal equitably and fairly with all returning veterans. The Court said in *Mitchell* v. *Cohen*, 333 U. S. 411, 418 (1948):

> "The Veterans' Preference Act was enacted in 1944 to aid in the readjustment and rehabilitation of World War II veterans. It was felt that the problems of these returning veterans were particularly acute and merited special consideration. Their normal employment and mode of life had been seriously disrupted by their service in the armed

forces and it was thought that they could not be expected to resume their regular activities without reemployment and rehabilitation aids. * * *"

There would be no reason at all for Congress to discriminate unfairly against veterans previously employed in favor of those employed for the first time after completion of their military service. It is submitted therefore that the Veterans' Preference Act of 1944 may be taken as indicating that Congress did not consider that it was making any arbitrary or unfair discrimination as between these classes of veterans, but that the legislative branch of the Government regarded the treatment of all veterans on the same basis, without distinguishing between employment before and after military service, as a fair and equitable basis for layoffs in civilian employment by Federal agencies.

The Union here did not follow blindly the provisions of the Veterans' Preference Act (*supra*, p. 4), which were suited to Government civilian employment and to some extent gave an absolute preference to veterans in respect of layoff, without regard to the length of employment of nonveterans. *Hilton* v. *Sullivan*, 334 U. S. 323, 335-336 (1948). The Union molded the provisions with respect to seniority to fit the problem presented in private industry.

As in the Act, all veterans are treated upon the same basis and, accordingly, it is submitted that they are treated fairly and equitably. Nonveterans are not subjected to the absolute preference granted to veterans by the Act and, it is submitted, the provisions, as to nonveterans, are no less fair and equitable. The provisions adopted by the contracts gave to veterans not previously employed credit only for military service occurring after June 21, 1941. The

seniority rights of veterans and nonveterans employed prior to that date are not affected in any respect. The provisions only affect the persons who entered the employ of the company after that date. But it was the employment of such persons subsequent to that date and their resultant accrual of seniority credit which gave rise to the problem involved. By June 21, 1941 the impetus to military service had commenced.* Thereafter, in increasingly large numbers, those persons newly employed by private industry were comprised of marginal labor who normally would not have secured such employment had it not been for the fact that the war was draining the manpower of the country.** Generally speaking, it was employees of this type, who otherwise would have profited by absence of others in military service, and whose rights so acquired were adversely affected by affording seniority credit for military service to those employees who were prevented by war from continuing in or entering into employment. It was no more unreasonable for the Union to assume that veterans first employed after military service might have entered the ranks of the Company's employees earlier but for the war than for Congress, in the Selective Training and Service Act, to assume that an employee would have continued in the Company's employ but for the war.

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*The President's proclamation of May 28, 1941 (6 Fed. Reg. 2617) recognized the danger to this country inherent in the war in Europe, and drafting for military service had commenced.

**There also may well have been a class of persons who secured factory jobs in the hope of draft deferment. In addition, there undoubtedly were large numbers of prospective draftees who secured employment briefly in order to take advantage, following their discharge from military service, of the re-employment provisions of the Selective Service Act.

The statutory bargaining representative must be accorded a broad discretion in order to accomplish the objectives of the National Labor Relations Act.

The decision of the Court of Appeals in this case, if allowed to stand, would result in widespread confusion and impose unnecessary restraints in connection with the normal process of collective bargaining. It casts serious question upon the validity of many types of provisions commonly adopted in negotiated labor contracts. For example, it is frequent practice to perpetuate the distinction made in a company's first labor agreement between present and new employees for purposes of seniority. Commonly, the employees at the date of adoption of the initial agreement are granted seniority from their original hiring dates, without regard to transfers from unit to unit, while individuals thereafter employed are granted seniority only from the dates of their entry into particular units. Also, provisions ordinarily are made for the future specifying the types of interruption in employment which will break seniority; but these are not applied retroactively. Such differentiations may be based on inadequacy of records, considerations of fairness or other factors deemed relevant by the parties. The validity of such provisions may well be questioned in the light of the decision of the Court of Appeals.

The everyday matter of leaves of absence is an inseparable part of a seniority system. Determination of the factors which will stop the accrual of seniority is at least as important as determination of those which begin it. An employee who is absent for any length of time without leave

generally loses his seniority. When leaves of absence are granted, seniority generally is not lost, but may or may not continue to accrue. Many contracts provide for accrual of seniority during certain leaves of absence for varying periods of time. Thus, veterans may be afforded leave to take advantage of the educational program provided for in the G. I. Bill of Rights (R. 16, Sec. 13(f); R. 19, Sec. 13(f); R. 21-22, Sec. 12(e)), whereas nonveterans do not have that right. It might be argued that such differences in treatment result in unlawful discrimination because others are not permitted leaves of absence for educational purposes. It might be argued also that it would be unlawful to permit longer periods of absence without loss of seniority to employees who are unable to work because of illness (not job incurred) than are permitted to other employees for purely personal reasons. It might be argued that a provision for leaves of absence to enable employees to take National Guard training amounts to unlawful discrimination. If distinctions cannot be made unless directly related to employment dates and to the requirements of the work performed, as the Court of Appeals appears to have held, then such provisions would appear to be invalid.

The decision of the Court of Appeals would likewise cast serious doubt upon the validity of provisions affording seniority credit to employees in nonessential war work who, because of directives of the War Manpower Commission or voluntarily, left such employment for work more essential to the war effort. Provisions have been negotiated protecting such employees from loss in their seniority status upon their return to their regular employment. Such provisions have been regarded by the War Labor Board as within the area of collective bargaining. *In re Retail Grocers' Association,*

15 War Labor Rep. 22 (Regional Board X (San Francisco) 1944); *In re Shell Oil Co.*, 15 War Labor Rep. 139 (Regional Board I (Boston) 1944); *In re Tulsa & Sapulpa Bakeries*, 20 War Labor Rep. 325, 326, 328 (National Board 1944); *In re Pittsburgh-Des Moines Co.*, 21 War Labor Rep. 45 (Regional Board III (Philadelphia) 1944); *In re Bendix Aviation Corp.*, 21 War Labor Rep. 145 (National Board 1945); *In re Fulton Bag and Cotton Mills*, 22 War Labor Rep. 753, 755, 762-763 (Regional Board VII (Kansas City) 1945).

These are but examples of various problems which are encountered in the day-to-day process of collective bargaining. They must be solved on a practical basis. In a large and complex organization, the operation of a layoff system based on seniority is no simple matter of lining up employees in accordance with their hiring dates. It involves not only the computation of seniority, but also the significance attributed to it, the determination of the areas within which it shall operate, and the rules as to whose seniority shall be considered in connection with the particular job, department or other unit affected by employment adjustments. As the Court said in *Aeronautical Industrial District Lodge 727 v. Campbell*, 337 U. S. 521, 526 (1949):

> "* * * There are great variations in the use of the seniority principle through collective bargaining bearing on the time when seniority begins, determination of the units subject to the same seniority, and the consequences which flow from seniority. All these variations disclose limitations upon the dogmatic use of the principle of seniority in the interest of the ultimate aims of collective bargaining. * * *"

The Court of Appeals attacked the provision in question as one "which has no relevance to terms and conditions of

work" (R. 37), and thus, inferentially, not within the area of bargaining authorized by the Act.

Such reasoning, we submit, reflects a basic misconception of the function of a bargaining representative as set forth in Section 9(a) of the Act, which makes the union the exclusive representative of the employees "for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment" (*supra*, p. 6).

The authority thus conferred is to deal concerning the terms and conditions applicable to the employees in the unit. The agreed upon order to be followed in layoff, the rules to be applied in computing seniority, are not merely remote matters to be related to conditions of employment. They are, in and of themselves, among "the conditions of employment" to which the Act refers. An attack on a particular condition of employment cannot rationally be made on the ground that it is not a condition of employment within the meaning of the National Labor Relations Act, and thus outside the scope of the union's authority under the Act.

Let us assume for example that a union organizes the employees of an employer who has been following—as he had a clear right to do—an announced policy of giving preference in layoff to veterans over all other employees regardless of length of service with the employer; that following certification the union demands that this system be ended and that a system of layoffs based solely on length of service with the employer be followed instead; and that the employer takes a strong position in the bargaining that the system which he has been following is a fair one, and one which he desires to continue. Let us assume further that in the give and take of bargaining on this and other matters, the employer prevails upon the union to agree to

3. That the plaintiffs, and each of them, be restored to their seniority credits and rights with the defendant Company,

4. For such other and further relief as they may be entitled to, and

5. For the costs of this action.

/s/ ELBERT E. FOSTER
Attorney for Plaintiffs

APPENDIX C

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

CHARLOTTE DIVISION

C. R. PRICE, et als.,
Plaintiffs,
vs.
FORD MOTOR COMPANY, a Corporation, et als.,
Defendants.

ORDER FOR SUMMARY JUDGMENT

THIS CAUSE, coming on to be heard before his Honor Donald Gilliam, United States District Judge, Judge presiding at the June 7th, 1948, adjourned session of the April 1948 Term, on motion of defendants for a summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the court having considered the pleadings in the action; having heard oral argument; having found that there is no genuine issue as to any material fact and no controversial question of fact to be submitted to the trial court; and having concluded that the defendants are entitled to judgment as a matter of law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the agreement of September 29, 1947, between the defendant Ford Motor Company and defendant Union, and every part thereof, is valid and binding upon said Union and upon the plaintiffs in this action; that, therefore, this action be dismissed; and that the defendants recover of the plaintiffs

their costs of action, and that the defendants have execution therefor.

This 16th day of June, 1948.

/s/ DONALD GILLIAM
United States District Judge.

made for and was binding upon all employees for whom it was made."

See also *Ryan* v. *New York Cent. R. R.*, 267 Mich. 202, 208-210, 255 N. W. 365, 367-368 (1934); *Donovan* v. *Travers*, 285 Mass. 167, 174; 188 N. E. 705, 708 (1934); *Capra* v. *Local Lodge No. 273*, 102 Colo. 63, 68-69, 76 P. 2d 738, 740 (1938); *Leeder* v. *Cities Service Oil Co.*, 199 Okla. 618, 189 P. 2d 189 (1948).

The Court of Appeals' decision that the contract provision in question was "discriminatory" in preferring "men without experience over men with experience" was reached on the conclusion that no "valid reasons for preference" exist. This was inferred on the ground that "no other facts appeared of record" (R. 38). Inasmuch as the case came up on motions for summary judgment, there could not have been any evidence "of record" of other facts or circumstances.

There was no occasion for the defendants to introduce evidence in support of its denial that the Union acted beyond its authority and of its allegation that the provisions were founded upon differences existing in the employer-employee relationship (R. 12, Para. 17). The burden was upon the plaintiff to establish, by clear and convincing evidence, that the contract provision had no reasonable relation to an authorized objective of the bargaining agent. In the absence of any such showing by the plaintiff, the defendants were entitled to rely upon presumptions comparable to those indulged in by the courts in passing upon the constitutional validity of legislative acts.

The Court in the *Steele* case treated the power of the union as bargaining representative as analogous to the power

of a legislature for the purpose of defining both the negative and affirmative aspect of that power (*supra*, pp. 34-37). In applying that analogy it tested the bargaining power of the union by the application of principles which the Court had evolved in dealing with the constitutional validity of legislation. As illustrative of these principles the Court cited *Carmichael* v. *Southern Coal & Coke Co.*, 301 U. S. 495, 509 (1937); *Washington ex rel. Bond & Goodwin & Tucker* v. *Superior Court*, 289 U. S. 361; 366 (1933); and *Metropolitan Casualty Ins. Co.* v. *Brownell*, 294 U. S. 580, 583 (1935). These cases demonstrate the principle that the court is not confined to the record but must consider whether any reasonable state of facts could exist which would justify exercise of the power.

Thus in the *Metropolitan Casualty Insurance* case the Court said (p. 586):

> "* * * It was competent for the legislature to determine whether * * * differences exist, and upon the basis of those differences, and in the exercise of a legislative judgment, to make choice of the method of guarding against the evil aimed at. * * *"

In the *Carmichael* case the question involved was the constitutional validity of the Alabama State Unemployment Compensation Act. The Court pointed out there that a legislature not only "may make distinctions of degree having a rational basis" but that "when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it." The reason for the rule was explained (p. 510):

> "This restriction upon the judicial function, in passing on the constitutionality of statutes, is not

> artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalog of the considerations which move its members to enact laws. In the absence of such a record, courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function."

The Court also said (pp. 514-515):

> "* * * The existence of local conditions which, because of their nature and extent, are of concern to the public as a whole, the modes of advancing the public interest by correcting them or avoiding their consequences, are peculiarly within the knowledge of the legislature, and to it, and not to the courts, is committed the duty and responsibility of making choice of the possible methods. * * *"

The question whether the expenditures provided for by that statute served a public purpose was said to be a "practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a Court" (p. 515).

And in discussing the choice of the beneficiaries of the tax, the Court said that the legislature "may strike at the evil where it is most felt" (pp. 519-520) and "if a state of

facts may reasonably be conceived which would support the selection, its constitutionality must be sustained" (p. 520).

The similarity between the legislative function and that of the union in negotiating a labor agreement dictates the same approach where questions arise as to the validity of negotiated labor agreements. As is true of any legislative body, a bargaining representative cannot record a complete catalog of the many considerations peculiarly within its own knowledge which move it to negotiate the complicated provisions of a labor agreement. In the absence of such a record the refusal of a court to indulge in reasonable assumptions as to the existence of conditions justifying the exercise of its power would seriously impair the ability of the bargaining representative to carry out the objectives of the National Labor Relations Act. Moreover, any different approach to the problem would inject the courts into the process of collective bargaining and, as the Court has indicated, the National Labor Relations Act was not intended to permit either the courts or the Board to pass upon the desirability of the substantive terms of labor agreements. *National Labor Relations Board* v. *American Ins. Co.*, 343 U. S. 395, 406-7, 409 (1952), *supra*, p. 48.

The many considerations which support the exercise of the judgment of the bargaining representative have been pointed out in this brief. We submit that, within the principle of these cases, such considerations are controlling and the decision of the Court of Appeals should be reversed.

CONCLUSION

It is respectfully submitted that the Court should reverse the decision of the Court of Appeals to the effect that the

provisions granting seniority credit for military service to veterans not previously employed were invalid as beyond the negotiating authority of the Union under the National Labor Relations Act, and should direct a dismissal of the complaint. In the event, however, that the Court should be of the opinion that the facts supporting the reasonableness of the contract provisions should be of record, the case should be remanded for a trial upon the issue of validity.

Respectfully submitted,

WILLIAM T. GOSSETT,

L. HOMER SURBECK,

RICHARD W. HOGUE, JR.,

MALCOLM L. DENISE,

Counsel.

November 26, 1952.

APPENDIX A

Sections 8(a)-(c) of the Selective Training and Service Act

Subdivisions (a) to (c) of Section 8 of the Selective Training and Service Act of 1940 read as follows (54 Stat. 890 (1940), as amended, 56 Stat. 724 (1942), 58 Stat. 798 (1944), 50 U. S. C. App. § 308 (1946)):

"Sec. 8. (a) Any person inducted into the land or naval forces under this Act for training and service, who, in the judgment of those in authority over him, satisfactorily completes his period of training and service under section 3(b) shall be entitled to a certificate to that effect upon the completion of such period of training and service, which shall include a record of any special proficiency or merit attained. In addition, each such person who is inducted into the land or naval forces under this Act for training and service shall be given a physical examination at the beginning of such training and service; and upon the completion of his period of training and service under section 3 (b), each such person shall be given another physical examination and, upon the written request of the person concerned, shall be given a statement of medical record by the War Department: *Provided*, That such statement shall not contain any reference to mental or other conditions which in the judgment of the Secretary of War or the Secretary of the Navy would prove injurious to the physical or mental health of the person to whom it pertains.

"(b) In the case of any such person who, in order to perform such training and service, has left or leaves a position, other than a temporary position, in the employ of any employer and who (1) receives such certificate, (2) is still qualified to perform the duties of such position, and (3) makes application for reemployment within ninety days after he is re-

lieved from such training and service or from hospitalization continuing after discharge for a period of not more than one year—

"(A) if such position was in the employ of the United States Government, its Territories or possessions, or the District of Columbia, such person shall be restored to such position or to a position of like seniority, status, and pay;

"(B) if such position was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status, and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so;

"(C) if such position was in the employ of any State or political subdivision thereof, it is hereby declared to be the sense of the Congress that such person should be restored to such position or to a position of like seniority, status, and pay.

"(c) Any person who is restored to a position in accordance with the provisions of paragraph (A) or (B) of subsection (b) shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such forces, and shall not be discharged from such position without cause within one year after such restoration."

APPENDIX B

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF NORTH CAROLINA

C. R. PRICE, H. N. GRAHAM, M. T. MORGAN, J. F. ELAM, J. F. DAVIS, MARION STEGALL, GRAHAM VANCE, WOODROW BLACKMON, C. J. SCHROEDER, and R. B. MILLER,

Plaintiffs,

vs.

FORD MOTOR COMPANY, a corporation, and INTERNATIONAL UNION UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW-CIO),

Defendants.

AMENDED COMPLAINT

The plaintiffs complaining of the defendants, allege:

1. That the plaintiffs are citizens of the United States of America, and reside in the County of Mecklenburg, State of North Carolina.

2. That the defendant, Ford Motor Company, is a corporation, duly organized and existing according to law, with its principal offices in the City of Dearborn, State of Michigan, with large factories in said state, and is engaged in the manufacture and sale of Ford, Mercury and Lincoln automobiles, and does business in the various states of the United States, its territories and possessions, as well as in foreign countries, and that said corporation is not a North

Carolina corporation, but has a branch office and place of business in the City of Charlotte, County of Mecklenburg, State of North Carolina.

3. That the defendant, International Union, United Automobile, Aircraft, and Agricultural Implement Workers of America, (UAW-CIO), hereinafter designated as Union, is an affiliate of the Congress of Industrial Organizations, and is an association of automobile and other types of workers, having local chapters throughout the automobile, as well as, other industries, and has its principal office in the City of Detroit, State of Michigan.

4. That one of the local chapters of the said Union is No. 968 at the Charlotte Branch of the Ford Motor Company.

5. That the plaintiffs are all members of local chapter No. 968 of said Union, and are now and have been for some time employees of the Charlotte Branch of the defendant, Ford Motor Company.

6. That the defendants, Ford Motor Company and the Union, on or about August, 1947, negotiated and entered into a contract, whereby the Ford Motor Company, hereinafter referred to as Company, recognized the Union as the exclusive collective bargaining agency relative to rates of pay, wages, hours of employment or other conditions of employment, for all the employees of the Company, in all of the production and assembly plants and units of the Company in the United States of America, with certain exceptions, which were excluded by said agreement or contract.

7. That in violation of the constitutional rights, and confiscatory thereof, of the plaintiffs, the defendants, Company and Union, entered into said contract of August, 1947, without the consent and approval of the plaintiffs.

Appendix B

Said contract of August, 1947, provides in substance, as follows:

"Any veteran of World War II who was not employed by any person or company at the time of his entry into the service of the land or naval forces or the Merchant Marine and who is a citizen of the United States and served with the allies and who has been honorably discharged from such training and service and who is hired by the company after he is relieved from training and service in the land or naval forces or after completion of service in the Merchant Marine shall, upon having been employed for six (6) months and not before, receive seniority credit for the period of such service subsequent to June 21, 1941, provided:

(1) Such veteran must apply for employment within ninety (90) days from the time he is relieved from such training or service in the land or naval forces or the time of his completion of such service in the Merchant Marine, and must obtain such employment within twelve (12) months from the time he is relieved from such training and service in the land or naval forces or the time of his completion of such service in the Merchant Marine.

(2) Such veteran shall not have previously exercised this right in any plant of this or any other company.

(3) A veteran so employed shall submit his service discharge papers to the company at the end of aforesaid probationary period of employment and the company shall place thereon in permanent form a statement showing that the veteran has exercised this right, such statement to be signed by representa-

tives of the company and the Union, and a copy thereof placed in the employee's record and a copy furnished to the Union.

It is further understood and agreed that, regardless of any of the foregoing, all veterans in the employ of the company at the time the Contract is thus amended shall receive seniority credit for their period of service, subsequent to June 21, 1941 in the land or naval forces or Merchant Marine of the United States or its allies, upon completion of their probationary period.

9. That the plaintiffs, and each of them, are non-veterans of World War II.

10. That the plaintiff, M. T. Morgan, has been in the employ of the Company for approximately ten years; that the plaintiff, Marion Stegall, has been in the employ of the Company for more than eight years; and that the other plaintiffs have been in the employ of the Company for periods of time ranging from eighteen months to over two years, except the plaintiff, J. F. Davis, who has been employed by the Company for more than fifteen years.

11. That subsequent to August, 1947, the Company, acting under and by virtue of the said contract hereinabove set forth, have employed veterans of World War II, and extended to them service seniority, that is, seniority credit for their period of service in the armed forces of the United States subsequent to June 21, 1941, irrespective of previous or no previous employment with the Company, and thereby reducing the seniority of the plaintiffs with the Company, without regard to whether said new employees are better fitted to do and perform the work of the plaintiffs.

12. That the action of the defendants is a denial of the rights, privileges and properties of the plaintiffs, without

due process of law; that said action is discriminatory, and unlawful confiscation of property rights of the plaintiffs; that it is and amounts to a denial to the plaintiffs of their rights under the Constitution of the United States; that it deprives the plaintiffs of their seniority rights with the defendant Company without due process of law; that the plaintiffs are denied the equal protection of the laws, in violation of their rights under and by virtue of the Constitution of the United States; and such action on the part of the defendants is subject to judicial review.

13. That the plaintiffs do not have an adequate remedy at law, and that continued unlawful action on the part of the defendants as herein set forth will cause the plaintiffs irreparable injury and damage. That the subject matter of this action involves more than the sum of $3,000.00, plus interest.

14. That the plaintiffs have been advised that the equity powers of this Court may be invoked in their favor to enjoin and restrain the defendants from carrying out the terms of said supplementary agreement, to the end that the discrimination and unfair operation of said agreement will be prohibited and caused to be ceased.

WHEREFORE, plaintiffs pray that,

1. That an Order of this Court issue enjoining and restraining the defendants, and each of them, from enforcing and performing the terms of said contract,

2. That the defendants, and each of them, be caused to be and appear before this Court and show cause, if any they have, why such temporary restraining order or injunction should not be permanently made,

Supreme Court of the United States

October Term, 1952.

No. 193.

FORD MOTOR COMPANY, - Petitioner,

versus

GEORGE HUFFMAN, Individually, Etc., - Respondents,

AND

No. 194.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, Etc., - - - - - Petitioner,

versus

GEORGE HUFFMAN, Individually, Etc., - Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Sixth Circuit.

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